IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:13-CV-00030-RLV
(5:99CR00012-RLV-6)

FLOYD JUNIOR POWELL,   )
)
         Petitioner,   )
)
         v.   )
)   **ORDER**
UNITED STATES OF AMERICA,   )
)
         Respondent.   )
_____)

THIS MATTER is before the Court on initial review of Petitioner's Motion to Vacate, Set

Aside or Correct Sentence filed under 28 U.S.C. § 2255. (Doc. No. 1). No response is necessary

from the Government. For the reasons that follow, Petitioner's Section 2255 Motion will be

DISMISSED.

I. BACKGROUND

On March 7, 2001, Petitioner was convicted of one count of conspiracy to possess with

intent to distribute cocaine and cocaine base, in violation of 21 U.S.C. § 846 (Count One); and

one count of possession with intent to distribute cocaine base, and aiding and abetting the same,

in violation of 21 U.S.C. § 841(a)(1) & 18 U.S.C. § 2 (Count Seven). Petitioner was sentenced to

concurrent terms of 240-months' imprisonment on Counts One and Seven. (5:99CR00012, Doc.

No. 296). Petitioner filed a notice of appeal to the United States Court of Appeals for the Fourth

Circuit and his conviction and sentence were affirmed. United States v. Powell, 38 F. App'x 140

(4th Cir. filed Mar. 28, 2002) (unpublished). (Doc. No. 347).

On November 4, 2002, Petitioner filed a Section 2255 motion which was denied and

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dismissed on December 2, 2004.(5:02CV000138-RLV). The Fourth Circuit dismissed Petitioner's appeal from this Order. United States v. Powell, No. 04-7989 (4th Cir. filed Apr. 14, 2006) (unpublished). On February 7, 2005, Petitioner filed a second motion under Section 2255 that the Court dismissed as an unauthorized, successive petition. (5:05CV00014-RLV). Petitioner did not appeal.

On February 11, 2013, Petitioner filed another motion seeking relief under Section 2255. Because the Court finds this is yet another unauthorized petition, as explained below, the Court will dismiss the petition.

II.   DISCUSSION

The Antiterrorism and Effective Death Penalty Act (AEDPA) provides, in relevant part, that "[a] second or successive motion [under Section 2255] must be certified as provided in Section 2244 by a panel of the appropriate court of appeals to contain—

> (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
>
> (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.
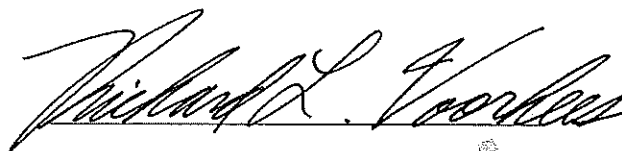
28 U.S.C. § 2255(h).

Petitioner has filed three § 2255 motions, one of which was dismissed as being without merit and one that was dismissed as successive. Petitioner has provided no evidence that he has secured the necessary authorization from the Fourth Circuit to proceed with a successive Section 2255 motion. This Court is therefore without jurisdiction to consider the present petition under Section 2255.

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III. CONCLUSION

IT IS, THEREFORE, ORDERED that Petitioner's Section 2255 Motion be

DISMISSED as successive. (Doc. No. 1).

IT IS FURTHER ORDERED that pursuant to Rule 11(a) of the Rules Governing

Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not

made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-

El v. Cockrell, 537 U.S. 322, 336-38 (2003) (stating that in order to satisfy § 2253(c), a

petitioner must demonstrate that reasonable jurists would find the district court's assessment of

the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 474, 484 (2000)

(holding that when relief is denied on procedural grounds, a petitioner must establish both that

the correctness of the dispositive procedural ruling is debatable and that the petition states a

debatably valid claim of the denial of a constitutional right).

Signed: March 8, 2013

Richard L. Voorhees
United States District Judge